

Sunset Public Hearing Questions for
Tennessee Board of Water Quality, Oil and Gas
Created by Section 69-3-104, *Tennessee Code Annotated*
(Sunset termination June 2014)

1. Provide a brief introduction to the Tennessee Board of Water Quality, Oil and Gas, including information about its purpose, statutory duties, staff, and administrative attachment.

The primary duties of the Board are promulgating rules and hearing appeals regarding enforcement matters and permits issued or denied. The Director of the Division of Water Resources serves as Technical Secretary for the Board and additional staff as needed assist the Technical Secretary with the administrative tasks necessary for the board to function. The Acts that set the Board's duties also give a number of functions to the Commissioner such as making decisions on permit applications and issuing enforcement orders.

2. Provide a list of current board members and describe how membership complies with Section 69-3-104, *Tennessee Code Annotated*. Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?

See below. There are no vacancies. Board appointments conform to Tenn. Code Ann. § 69-3-104 regarding the various designated interests served. Current members' terms expire 9-30-16. Alternate board members are those required by §69-3-104(b) to hear permit appeals in the place of members who receive more than 10% of their income from permittees.

James W. Cameron, III	09-30-2016	Small Generator of Water Pollution representing Automotive Interests
Jill Davis (Saya Qualls-Alternate) (Doug Unger-Alternate)	09-30-2016	Municipalities
Mayor Kevin Davis	09-30-2016	Counties
Derek Gernt (Mark Kline-Alternate)	09-30-2016	Oil or Gas Property Owner
John Guoynes (Jonathon Dales-Alternate) (Lonnie Jeffers-Alternate*) *Racial Minority	09-30-2016	Oil & Gas Industry
C. Monty Halcomb	09-30-2016	Environmental Interests
Chuck Head	Ex-Officio	Commissioner's Designee, Department of Environment and Conservation
Charlie Johnson	09-30-2016	Public-at-large
Judy Manners	Ex-Officio	Commissioner's Designee, Department of Health
John McClurkan	Ex-Officio	Commissioner's Designee, Department of Agriculture
Frank McGinley	09-30-2016	Agricultural Interests
D. Anthony Robinson	09-30-2016	Manufacturing Industry

3. Does membership include a member who is 60 years of age or older? *Yes.* A member of a racial minority? *Yes-See table above.* A female member? *Yes-See table above.* A public/citizen member? *Yes-See table above.*
4. The effective date for the combination of the previously existing boards into the Board of Water Quality, Oil and Gas was in October 2012. What is the current status of the consolidation and what expected or unexpected obstacles, if any, have been encountered? Is consolidation complete and, if not, when is completion anticipated?

Consolidation is complete. Getting some paperwork completed was one difficulty.

5. What per diem or travel reimbursement do members receive? How much was paid to board members to date since the board was formed in October 2012?

Each board member, with the exception of Ex Officio members, is paid \$50.00 per day of service as authorized by TCA 69-3-104(c) in addition to travel reimbursement and claims for meals and lodging. Two thousand two hundred dollars (\$2,200.00) in per diem has been paid to board members since October 2012 and six thousand nine hundred sixty-nine dollars and forty-three cents (\$6,969.43) has been paid in travel, lodging and meal reimbursements since October 2012.

6. How many times has the board met to date since it was formed in October 2012, and how many members were present at each meeting?

The board has met six times since October 2012. Attendance included: October 2012—9, November 2012—8, December 2012—12, January 2013—9, February 2013—no meeting, March 2013—11, April 2013—11.

7. Does the board have a web site? If so, please provide its web address. What kind of public information is provided on the site?

The board web address is <http://www.tn.gov/environment/boards/wgog>. This site contains information regarding board member names, terms of service, representations, monthly agenda and Sunshine Notices.

8. Describe the policies the board has in place to address potential conflicts of interest by board members and employees.

Annual conflict of interest forms are required for each board member and each board member is required to nominate an alternate to serve in the event of a conflict of interest.

9. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of its meetings and making its minutes available to the public?

Yes. Links to the Sunshine Notice and the monthly agenda are posted on the board web page, a court reporter is present for all board meetings and copies of the minutes, once finalized, are provided upon request.

10. What were the board's revenues (by source) and expenditures (by object) to date since the board was formed in October 2012?

The board does not directly receive revenues. The expenditures for the board meetings are mentioned in item 5 above.

11. Specifically, what is the board's role in setting standards for and the issuance of permits as outlined in Section 69-3-107 and 108, Tennessee Code Annotated?

The board adopts rules some of which set the criteria for the issuance of permits. The statute gives the Commissioner authority to issue permits.

12. At what point, if at all, do the activities of the board intersect with the activities of the Underground Storage Tanks and Solid Waste Disposal Control Board?

The activities of the two boards do not really intersect, but there are some facilities that are regulated under both of the statutes that create the two boards. For example a landfill has to receive a permit under the Solid Waste Disposal Control Act and, if there is a discharge to surface water, a permit under the Water Quality Control Act.

13. What have been the primary accomplishments of the board since it was formed in October 2012. Specifically, what has the board accomplished pursuant to each of the duties and authorities set forth in Section 69-3-105?

Since October 2012, the board has promulgated a number of rules. As well as adopting rules as part of the program to reorganize all of the Department's rules in a more logical and user friendly manner, the board has adopted new rules regulating biosolids and rock harvesting and has revised the water quality criteria, and use classifications for surface waters. The biosolids rules largely track the requirements of an EPA rule. The rock harvesting rule implements public chapter 341 of 2011, codified at §69-3-143 through 69-3-147. The board has also resolved a number of enforcement matters.

14. Has the board set goals and developed performance measures for each goal? What performance indicators does management use to measure the effectiveness and efficiency of the board? How well has the board performed based on those performance indicators? ***No.***

15. What reports or other publications, does the board prepare on its operations, activities, and accomplishments, and who receives those reports? Are there other reports required by statute, rule, or policy? If so, describe.

The Board does not prepare reports or other publications, other than minutes of its monthly meetings, which are available to the public.

16. Has the board exercised its power to establish and adopt standards of quality for all water of the state as authorized in Section 69-3-105(a). *Yes*. If so, where and how are those standards set forth?

See Item 13 above. The standards are set forth in Chapter 1200-04-03 General Water Quality Criteria.

17. Has the board exercised its authority to promulgate rules and regulations as authorized in Section 69-3-105(b), (c), (h) and (j), and in Section 69-3-131, *Tennessee Code Annotated*? *Yes*. If so, please cite the reference and state generally what rules and regulations promulgated in each of these sections covers.

In addition to the recent rule amendment regarding the water quality criteria mentioned in item 13 above, the predecessor Water Quality Control Board adopted rules at 1200-04-05 and 1200-04-07 for permits which relate to §69-3-105(b) (c) and (h). Rules regarding underground injection under §69-3-105(j) are found at 400-45-06. The department has issued a number of general permits addressing the matters mentioned in 69-3-131 and §69-3-108(l).

18. How do the powers, duties and responsibilities of the board, especially those set out in Section 69-3-105(j), *Tennessee Code Annotated*, relate to the practice known as hydraulic fracturing or “fracking”?

Shortly before the merger of the two boards became effective in October 2012, the Oil and Gas Board adopted rules governing the practice of ‘fracking’ in September of 2012. That rulemaking proceeding had started prior to the General Assembly’s enactment of the law that consolidated the boards.

16. Describe any items related to the board that require legislative attention and your proposed legislative changes. *None*.

17. Should the board be continued? Why or why not?

Yes. The board provides a vital service in the adoption of rules, hearing of public comments and the hearing and settling of appealed civil enforcement orders and permit appeals.

18. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

Because TDEC receives federal funds, the department handles its compliance with Title VI with one system for the whole department.

If the board does receive federal assistance, please answer questions 19 through 26. If the board does not receive federal assistance, proceed directly to question 25.

19. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

TDEC has a Title VI Plan that is developed for and applicable to all TDEC programs.

20. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

TDEC has a Title VI Coordinator and Complaint Officer.

Coordinator: Costin Shamble (615-253-8337) - Facilitate Title VI compliance activities; review data and make recommendations of actions to enhance Title VI compliance; conduct Title VI training programs; compile Department's Title VI Implementation Plan; represent TDEC at meetings on Title VI.

Interim Complaint Officer: Hoda Guirguis (615-253-3400) - Receives Title VI complaints; conducts an investigation of complaints; facilitates a remedy of Title VI concerns; makes recommendation(s) of actions needed to resolve complaint.

21. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.

TDEC is required to submit an annual Title VI Implementation Plan to the Tennessee Human Rights Commission. Additionally, the Plan is submitted to and reviewed by the Title VI Legislative Sub-Committee of the State Legislature. A public hearing is conducted annually on the Plan. Disadvantaged business participation is submitted to the Environmental Protection Agency.

22. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.

Internally within TDEC:

- ***Mandatory Civil Rights training of TDEC staff included Title VI***
- ***TDEC Title VI brochure distributed to Department staff***
- ***Periodic discussions with staff, Title VI related actions/activities***
- ***Staff participation in training programs offered by state and federal agencies***

External actions by TDEC:

- ***Participation in Community Title VI workshops and conferences***
- ***Contract language includes Title VI compliance***
- ***Posting of Civil Rights posters***
- ***Distribution of Title VI brochure***

23. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.

Minority participation in TDEC programs and activities is reviewed by the Title VI Coordinator. Activities reviewed include: representation on boards, disadvantaged business participation, and public participation. Meetings with the Commissioner's staff are held to discuss minority participation issues at least quarterly. Disadvantaged business participation is submitted quarterly to the Environmental Protection Agency. A compilation of TDEC's minority outreach and participation is reviewed routinely and compiled annually.

24. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

TDEC did not receive any Title VI Complaints during fiscal year 2010-2011 or fiscal year 2011-2012.

Complaint procedure:

Complaints must be filed in writing. The complaint should be filed on TDEC's complaint form. The division director of the program will forward the complaint to the Title VI Complaint Officer.

TDEC will make a prompt investigation when a complaint or other information indicating a violation is received. If the investigation indicates a violation of Title VI, TDEC will notify the recipient and will attempt to resolve the matter informally. If the investigation indicates that a violation did not occur, TDEC will notify the recipient and the complainant in writing.

The Title VI Complaint Officer will submit findings and conclusions to TDEC Civil Rights Champions. The Assistant Commissioner will issue a decision on the investigation findings and conclusions. Decisions made by the Assistant Commissioner can be appealed to the Commissioner within 30 days of receipt of the decision.

A complaint may be filed with the appropriate Federal agency no later than 180 calendar days after the alleged discrimination occurred.

Citizen suits remain an option in this process.

TDEC's toll free hotline (1-888-891-8332), accessible statewide, is maintained and available for complaints.

25. Please provide a breakdown of current board staff by title, ethnicity, and gender. *See item 2.*

26. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner. *N/A.*